Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Acceleration of Broadband Deployment:	)	
Expanding the Reach and Reducing the Cost of	)	WC Docket No. 11-59
Broadband Deployment by Improving Policies	)	
Regarding Public Rights of Way and Wireless	)	
Facilities Siting	)	

REPLY COMMENTS OF
THE CENTER FOR MUNICIPAL SOLUTIONS

Monroe Telecom Associates, LLC and Comi Telecommunication Services, both of whom operate as The Center for Municipal Solutions ("CMS") submit these Reply Comments in response to the Comments filed[1] in the Notice of Inquiry.[2]

CMS teams with, represents, and assists local governments in their efforts to regulate communications towers, tall structures, and wireless facilities. To the best of our knowledge, CMS is the oldest, most experienced and largest public sector organization of its kind in the Nation, representing more than 700 communities in 32 states. In more than 15 years of serving local governments, we have reviewed more than 3,000 applications for the siting, construction, and/or modification of towers and/or wireless facilities. The principals of CMS, Richard Comi and Lawrence Monroe, are former telecommunications industry employees with upper-management and executive level experience.

Mr. Comi has over 30 years of experience in the telecommunications industry, having served as a former Director of Network Operations for New York Telephone and NYNEX, and

[1] *See, e.g.,* Comments of PCIA, WC Docket No. 11-59 (July 18, 2011); Comments of CTIA, WC Docket No. 11-59 (July 18, 2011); Comments of AT&T, WC Docket No. 11-59 (July 18, 2011)

[2] *Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, Notice of Inquiry, 26 F.C.C.R. 5384 (2011)("NOI").

as the former Vice President and Chief Operating Officer of Cellular One of Upstate New York. Mr. Comi is a regular lecturer to various state and national municipal organizations and has served as an expert witness in the area of wireless telecommunications and regulating wireless facilities. Mr. Monroe has 35 years experience in the cable and telecommunications field. For almost ten of those years, he served as a corporate vice president of Cablevision Industries, Inc. when it was one of the Nation's largest cable companies and before it was sold to Time Warner. As former industry insiders, Mr. Comi and Mr. Monroe each decided to take their respective professional knowledge and use it to benefit communities, rather than just the industry. Their unique knowledge and perspective gives them the ability to work with the industry in an effective manner and enables their clients to understand all the issues involved, including economic and technical issues, in a way that many local government officials historically have not been able to do.

CMS enables it clients to make truly informed decisions. The ability of local government officials to make informed decision is the overriding and underlying principal behind *all* of CMS's work. CMS ensures applicants provide accurate information in compliance with each individual community's regulations. Applications are reviewed by CMS, and generally receive positive recommendations, usually in 2 weeks or less from the date of receipt.

CMS's services include the review of wireless applications; making written recommendations with respect to wireless facility applications, including reasons for approvals and denials; and attending meetings and required hearings with respect to the applications. CMS attempts to ensure the least visual impact of wireless facilities given the facts and circumstances involved in a given application, and ensures the safe design, construction, operation and maintenance of the facility in a manner that does not inhibit, dissuade, or slow down the

provision of service. We strive to have facilities collocated, if possible, to minimize visual and other impacts on communities, while still allowing providers to deploy the equipment, technologies, and services required to meet the public's need and desire for wireless service.

In some cases only a new tower provides the coverage and services needed by a provider, while in others there are less intrusive options that will meet the technical needs of the applicant. Contrary to the impression one gets when reading the industries' assertions, CMS has recommended approval of new tower construction in hundreds of instances and to the best of our recollection has recommended denial of any type of application fewer than a half dozen times out of more than 3,000 applications.[3] In addition, communities CMS works with have found that CMS actually *shortens* application processing times with respect to the permitting process.

For example, Lunenberg County, Virginia received an application for a new 250' tall tower in October, CMS reviewed the application for completion in less than two (2) weeks and delivered its recommended approval three (3) weeks later. The County planning board approved the application at its next scheduled meeting and the provider completed its project less than 100 days later. The Lunenberg County project shows both how quickly CMS can process applications, versus the time it might take a community lacking sufficient staff to be able to dedicate someone to telecommunications issues having to educate itself with respect to the latest developments in tower siting, and that CMS regularly recommends approval of new tower construction. In another instance in Aiken County, South Carolina, even though it meant the loss of revenue for CMS, we found an alternative way for an applicant to achieve what it needed to do without the use of a wireless facility and avoided applying the County's wireless ordinance to the project altogether. Needless to say, the applicant was extremely appreciative.

[3] This amounts to a mere 0.002% (2/1,000 of 1%) of the applications reviewed.

As part of our application review, CMS also ensures safety standards are met and towers and wireless facilities are actually built as designed and permitted. For instance, in Johnston County, North Carolina it was discovered that the tower for a proposed co-location was already almost 400% over-stressed, *i.e.*, beyond it designed loading capacity. Despite knowing this from their own structural analysis, the tower company and carrier apparently intended to allow workers onto the tower to install the proposed new antennas and cabling facilities. Had the County ignored the situation and not required remediation of the problem, workers on this project could well have been included in OSHA's statistics regarding dangerous professions. *See*, Exhibit A, *Overstressed Tower*).

The industry wants to eliminate local requirements such as site visits for co-locations. However, co-locations are not as simple as the industry would have the Commission believe. Exhibit B, *Safety Climb & Blocked Climbing Space Violations*, shows the state of a tower in Alabama involving a co-location. Absent the site visit, the unsafe conditions on the tower would not have been discovered or remedied. Examples of other safety situations found during pre-application site visits for (simple) co-locations and upgrades involve what appear to be clear violations of the FCC's regulations concerning RF emissions, assuming the radios are powered at between 12 – 40 watts, as exemplified by Exhibit C, *RF Emissions Violations*. The existence of these situations, including the number of times safety violations are identified and able to be remedied as part of an application to co-locate or upgrade facilities, clearly shows that there are significant public interest and safety issues associated with applications for co-locating on existing structures. Because only local government can identify and require the remediation of these dangerous situations, it is critical that this right and duty of local government be protected and not diminished, much less preempted. CMS understands how vitally important broadband

deployment is to communities, especially rural communities, and we strive to get applicants' service up and operating as soon as practicable while still meeting the needs and policies of our client communities. We are so committed to this goal that we often suggest a condition that the facility be built and providing service within ninety (90) days for a co-location and one-hundred-twenty (120) days for a new tower. Unfortunately for our communities, applicants often object to that condition despite having exerted significant pressure to expedite the approval process. Further, having pushed for expedited review and received the relevant permits and permissions, applicants often seek extensions for time periods within which to build and sometimes walk away from projects either entirely or for years at a time.[4] *See*, Exhibit D, *Correspondence Between CMS Representative and Verizon Regarding Desire for Extensions of Time to Complete Construction*.

a. Review of Applications

Our practice includes review of the *entire* application (in detail, item-by-item) only once. In the case of an incomplete application, *i.e.*, one missing information or containing incorrect, inaccurate, or conflicting information, CMS reviews *only* the subsequently provided missing or corrected information. If there is a particularly problematic issue, especially involving a sophisticated or complicated technical issue, CMS's expert in that area may be called upon to review and analyze that particular information, but we work diligently to keep redundancy to minimum.

b. Processing Applications

As mentioned above, CMS operates with a policy of a *2 week* turnaround for the review of an application to determine its completeness or incompleteness. In many instances, our turn

[4] This is called 'warehousing' permits and is a common practice, forcing communities to have to wait as long as 2 years before a facility is built and activated after the grant of the permit.

around time is significantly less than that. In numerous instances we have, when told of the critical nature of an application for a co-location or modification, turned the review around in less than 48 hours and have numerous times worked holidays simply to accommodate an applicant. By way of recent example, we received six applications for various communities in Alabama on the same day. Five of the six applications were reviewed for completion and a report generated to the relevant community and the applicant on the very *same* day.

Out of more than three thousand applications in more than 700 communities over 15 years, CMS does not recall an instance when a client exceeded the time frames set forth in the FCC's 'Shot Clock' rules for reviewing an application for completeness, either before or after the adoption of the rules.

With respect to recommending approval or denial of an application, more difficult or complex tower or co-location sitings can require more time than non-complex applications. For example, sitings in or near residential neighborhoods; areas of sensitive "view sheds" (*e.g.*, the Smokey Mountains, coastline or beachfront communities, and similar natural treasures); and historic areas or renaissance areas often require more work and time to find a way to site the facility in a 'win-win' manner that meets both the applicant's needs and the need to protect the nature and character of the community. An example of a more complicated application involved Person County, North Carolina, where Cingular Wireless applied for three sites in a manner that did not totally interconnect, thereby leaving gaps in service between facilities. CMS worked to show the applicant how its facilities could interconnect, including at the proposed locations and heights. CMS did the applicant's work for it. This proved far less costly and time consuming for Cingular Wireless than the alternative of building at least one, and possibly two, additional sites, and/or changing locations to deal with the remaining gap issue. Reaching this solution required

more time be spent on the application, but ultimately everyone benefited. Cingular Wireless likely saved a million dollars, and no reasonable person could consider this a case of undue delay. Unfortunately, after receiving the necessary permits and permissions, Cingular Wireless took *four years* to build the facility.

Applications that are not compliant with applicable local, state or federal law, rules, and regulations also can become time-consuming. In our experience, it is not uncommon for consultants and attorneys hired by applicants to lack an understanding of the applicability of certain laws or regulations. In many instances in which CMS is faced with an incomplete application, we have recommended conditional approval of the application, provided that the applicant supplies the missing information before the building permit is issued. Therefore, the only impediment to the issuance of the building permit is the speed with which the applicant provides the missing and legally required information.

It is CMS's goal that the applicant's technical needs are met, while still protecting the aesthetic interests of individual communities and their citizens. Despite the additional time involved on a few difficult applications, CMS nonetheless works to ensure that action on an application occurs well within the Commission's mandated time frames and almost always in substantially less time than is allowed, years before the mandated time frames were instituted.

c. Application and Escrow Fees

CMS *strongly* believes that taxpayers, who are *not the financial beneficiaries* of the grant of a permit, should not have to pay for any expert assistance needed in reviewing wireless facility applications. The applicant is the financial beneficiary and should thus bear all costs related to its application.

CMS works on an hourly rate basis and a 'not-to-exceed-without-permission' basis. CMS does not use 'set' or 'flat' fees for its work, because, while some types of applications appear

similar in nature, each situation, site, and application, is in fact different and unique. Because communities would otherwise have to absorb the cost of processing applications which will bring economic benefit to a private company, CMS recommends that communities require an 'escrow' deposit in a specific amount against which CMS invoices monthly. We are extremely mindful of the needs and constraints faced by our local government clients, as well as the industry providers looking to deploy services in different regions of the country. As former members of the industry who used to have to pay such costs, we are particularly sensitive to this issue. Therefore, CMS does not charge what the market will bear, but rather charges a reasonable fee based on our experience and qualifications, just like plumbers, lawyers, and other service professionals. In fact, many of CMS's clients' ordinances provide for the return of unexpended amounts intended to be used for the review and processing of applications. CMS even goes beyond the ordinances and regularly reminds applicants to request the return of unexpended moneys, but we cannot force them to take the sensible step of actually requesting a return of unused funds.

d. Applicant Caused Delays

In our experience, applicants are primarily responsible for the length of time it takes to process an application. For instance, when applicants choose sites in residential neighborhoods or historic districts, citizens and their elected representatives become concerned. Choosing to locate a tower adjacent to or in residential neighborhoods raises several issues, including but far from being limited to negatively impacting property values and permanently destroying valuable viewsheds and ambiances that are often the financial lifeblood of a community. A current example involves the Town of Franklin, North Carolina, a nearly pristine Smokey Mountain community in North Carolina situated in a bucolic valley. The applicant (Verizon) is insisting on

constructing a 140' tower in the very heart of an R1 zoned area in this classic mountain community when there are multiple opportunities to co-locate on existing structures. It may take time to resolve this application in a way that enables the applicant to roll out the services it desires to sell, while balancing the community's desire to protect its natural vistas, since to-date the applicant has refused to provide proof of the technical need for a new 140' tower situated in the middle of an R1 zoned neighborhood, to the exclusion any reasonable collocation alternatives.

Obviously, residents want to be able to have access to wireless and wireline technologies in their homes. Equally as obvious, especially in this economy, residents want to protect the investment they have made in their homes and neighborhoods from anything that would cause a decline in the value of the largest investment many residents have. Unfortunately, meeting the needs of both the residents and the applicant is something of a balancing act and can take time in some instances. Our goal is to work as quickly as possible to reach a mutually acceptable resolution for all involved at minimum cost. This goal would be easier to achieve if providers were more cognizant of the needs of area citizens and were willing to look at alternatives before an application is filed and while it is being considered, rather than being entrenched in a particular position or location and refusing even to provide proof of the technical need for a new tower.

Additionally, in our experience, attorneys and consultants hired by some applicants neglect to review the applications before they are submitted and simple mistakes are made that result in conflicting or incomplete statements being made in applications. Often, a simple review of the application, before submission, would alert the filer that the application did not contain the information required or there were conflicts or inconsistencies regarding key information. These

hired consultants are often reluctant to return to their clients to gather the appropriate information, because they will have to admit that it was their or their client's failure that is causing delay.

We find it sometimes takes several months for an applicant to provide even simple missing information that they already possess, or corrected information, even when the information needed is something as simple as a corrected insurance form. Having to repeatedly request missing information, or corrections, in a piecemeal manner, over a period of weeks and sometimes months, unnecessarily increases the time and cost of review. Such situations are exclusively within the ability of the applicant to control and eliminate. By way of example, sometimes applicants refuse to provide proof of the technical need for a new facility, making it impossible for communities to determine the need for what is requested and expeditiously evaluate the merits of an application. If proof of a technical need is not submitted for an application to locate a new 140 foot tower in the midst of a residential neighborhood where the dwellings are significantly shorter, and the applicant refuses to provide proof claiming the information is "proprietary and confidential," local officials have no basis for justifying their decision to affected property owners and residents. Nor can they evaluate any potential alternative because they have not been provided with the technical information they need to make an informed and appropriate decision. This lack of cooperation forces CMS to find other ways to obtain this information, raising costs and increasing the amount of time required to process an application.

Lastly, CMS has found that in many instances applicants change personnel or consultants in charge of shepherding a particular application through the relatively short application and review process, sometimes several times in the course of a mere two or three month period. This

requires that the new person or entity be brought up to speed on where the application process stands. The new representative often asks CMS to assist in this process, even though CMS states, before doing so, that doing so will incur charges. In *every* instance the new representative has insisted that CMS provide the assistance to come up to speed on the application. In some instances where a new representative is hired mid-stream, the new representative does not move forward with the application for months, letting it languish as an "open" file. Unfortunately, the industry often, disingenuously, cites these situations as examples of "delay," neglecting to mention that the delay is caused by their representatives.

In our experience, we have found that most providers start and stop projects for reasons completely unrelated to the application approval process. Sometimes projects are halted for a year or more, or even put on hold indefinitely. Sometimes no formal application is ever filed because a provider is "testing the waters" to determine whether they could sustain profitability based on the potential number of subscribers in an area. Nonetheless, providers use such situations as examples of delays caused by the community or CMS. Despite the economic realities of having an insufficient subscriber base to justify the capital outlay of deployment, some providers speciously assert that the only thing standing in their way is the local government application process. In point of fact, and as demonstrated by this response, the opposite is normally the case.